

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-SE-202
)	
DirecTV Enterprises, LLC)	NAL/Acct. No. 200732100019
Satellite Earth Station, Call Sign E950349)	
El Segundo, CA)	FRN: 0003779329

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 27, 2007**Released: March 29, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find DirecTV Enterprises, LLC ("DirecTV"), licensee of satellite earth station, call sign E950349, El Segundo, California, apparently liable for forfeiture in the amount of ten thousand, four hundred dollars (\$10,400) for operating its earth station without Commission authority and for failing to file a timely renewal application. DirecTV acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, ("Act")¹ and Sections 25.102(a) and 25.121(e) of the Commission's Rules ("Rules").²

II. BACKGROUND

2. DirecTV's license for its Ku-band fixed satellite service earth station, call sign E950349, expired on October 27, 2005. On April 27, 2006, counsel for DirecTV indicated to International Bureau staff that the license for the earth station was not renewed prior to its expiration date. On May 1, 2006, DirecTV filed a request for special temporary authority ("STA") to operate the earth station pending grant of an application for a new earth station license. The International Bureau granted DirecTV's STA request on May 2, 2006, but rescinded the grant on May 3, 2006, and dismissed the STA request as defective on May 5, 2006.³ On the same day, May 5, 2006, DirecTV filed another STA request, which the International Bureau granted on May 18, 2006⁴

3. Because it appeared that DirecTV may have operated the earth station without authority after expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On November 9, 2006, the Enforcement Bureau's

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a) and 25.121(e).

³ See File SES-STA-20060501-00734; see also Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to William M. Wiltshire, Esq., DA 06-990, released May 5, 2006

⁴ See File SES-STA-20060508-00756. The STA was granted for 30 days without prejudice to any future enforcement action against DirecTV in connection with unauthorized operation of its radio facilities. On June 9, 2006, DirecTV filed for a 60-day extension of the STA. See File No. SES-STA 20060609-00958. The STA was extended for 60 days on June 12, 2006 without prejudice to any future enforcement action against DirecTV in connection with unauthorized operation of its radio facilities.

Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to DirecTV.⁵

4. In its December 22, 2006 response to the LOI,⁶ DirecTV states that it first became aware “on or about April 27, 2006” that its license for earth station E950349 had expired. DirecTV acknowledges that it operated earth station E950349 without authority from October 27, 2005 to May 2, 2006 when the International Bureau granted an STA. DirecTV asserted that once it realized that its license for earth station E950349 had expired, it initiated steps to apply for an STA to continue operating its earth station pending Commission action on a new license application. The International Bureau granted its application for a new license on August 25, 2006.⁷

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires that licensees file renewal applications for earth stations “no earlier than 90 days, and no later than 30 days, before the expiration of the license.”⁸

6. As a Commission licensee, DirecTV was required to timely renew its authorization in order to operate its earth station. DirecTV concedes that it has operated earth station E950349 without Commission authorization from October 27, 2005, to May 2, 2006. By operating its earth station for approximately six months without authorization, DirecTV apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. DirecTV also apparently violated Section 25.121(e) of the Rules by allowing its license to lapse without renewal.

7. Section 503(b) of the Act,⁹ and Section 1.80(a) of the Rules,¹⁰ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and “repeatedly” means more than once.¹¹ Based upon the record before us, it appears that DirecTV's violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such

⁵ Letter from Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jack Wengrynuik, DirecTV (November 9, 2006).

⁶ Letter from William M. Wiltshire, Esq., Counsel for DirecTV Enterprises, LLC, to Peter Waltonen, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 22, 2006).

⁷ See File No. SES-LIC-20060608-00945.

⁸ 47 C.F.R. § 25.121(e).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80(a).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *WCS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee's inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

other matters as justice may require.”¹² Having considered the statutory factors, as explained below, we propose a forfeiture of \$10,400.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file required forms or information.¹³ As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.¹⁴

10. We propose a forfeiture in the amount of \$5,000 for DirecTV’s unauthorized operation of its earth station E950349 after October 27, 2005. In proposing this forfeiture amount, we recognize that the Commission considers a licensee who operates a station with an expired authorization in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.¹⁵ Consistent with precedent,¹⁶ we also propose a forfeiture in the amount of \$1,500 for DirecTV’s failure to file a renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules. Thus, we propose an aggregate forfeiture amount of \$6,500 (\$5,000 for unauthorized operation and \$1,500 for failure to file a timely renewal application).

11. The \$6,500 base forfeiture amount is subject to adjustment, however. In this regard, we consider DirecTV’s size and ability to pay a forfeiture.¹⁷ To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as DirecTV, could expect the assessment of higher forfeitures for violations.¹⁸ Given DirecTV’s size and ability to pay a forfeiture, we conclude that an upward adjustment of the base amount to \$13,000 is appropriate.

12. DirecTV claims that renewal of its earth station was the responsibility of its Latin America operations and was “managed by a separate arm of the company.” Thus, DirecTV explains, timely renewal of earth station E950349 “slipped through the cracks.” As a Commission licensee, DirecTV is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 C.F.R. 1.80(b).

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application) (“*Discussion Radio*”).

¹⁵ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Lazer Broadcasting*”); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”).

¹⁶ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Lazer Broadcasting*, 21 FCC Rcd at 8712; *Criswell College*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

¹⁷ DirecTV reported revenues of approximately \$14.7 billion in its annual report for 2006.

¹⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

earth station.¹⁹ DirecTV also states that no interference occurred during its operation of its earth station. It is well established that the absence of public harm is not considered a mitigating factor for a rule violation.²⁰ We do find, however, that a downward adjustment of the proposed forfeiture from \$13,000 to \$10,400 is warranted because DirecTV made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²¹

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²² and Sections 0.111, 0.311 and 1.80 of the Rules,²³ DirecTV **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of ten thousand, four hundred dollars (\$10,400) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁴ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, DirecTV **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Request for full payment of the NAL amount under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

¹⁹ See *Discussion Radio*, 19 FCC Rcd at 7437.

²⁰ *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, stating that "[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference"); *NWN*, 21 FCC Rcd at 3927 (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because its operation of an unauthorized earth station did not cause interference or disrupt other users); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476, 1478-79 (Enf. Bur. 2003) (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because even though it operated booster stations at unauthorized sites with excessive power levels, its operations did not result in interference).

²¹ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004).

²² 47 U.S.C. § 503(b).

²³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁴ 47 C.F.R. § 1.80.

²⁵ See 47 C.F.R. § 1.1914.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to William M. Wiltshire, Esq., Counsel for DirecTV Enterprises, Harris, Wiltshire & Gannis, LLP, 1200 Eighteenth Street, NW, Washington, DC 20036 and Mr. Jack Wengrynuik, DirecTV Enterprises, LLC, 2230 E. Imperial Hwy, El Segundo, CA 90245.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau